

BOARD of SUPERVISORS



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MEMORANDUM

TO: Olson Lee, Director, Mayor's Office of Housing and Community Development
Nadia Sesay, Interim Executive Director, Office of Community Investment and Infrastructure

FROM: *el*
br Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: March 1, 2017

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, introduced by Supervisor Kim on February 28, 2017:

File No. 161351

Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; adding reporting requirements for density bonus projects; affirming the Planning Department's determination under the California Environmental Quality Act; making findings under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Eugene Flannery, Mayor's Office of Housing and Community Development
Kate Hartley, Mayor's Office of Housing and Community Development

1 [Planning Code - Inclusionary Affordable Housing Fee and Requirements]

2
3 **Ordinance amending the Planning Code to revise the amount of the Inclusionary**
4 **Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives**
5 **and other Inclusionary Housing requirements; adding reporting requirements for**
6 **density bonus projects; affirming the Planning Department's determination under the**
7 **California Environmental Quality Act; making findings under Planning Code,**
8 **Section 302; and making findings of consistency with the General Plan, and the eight**
9 **priority policies of Planning Code, Section 101.1.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. General Findings.

19 (a) The Planning Department has determined that the actions contemplated in this
20 ordinance comply with the California Environmental Quality Act (California Public Resources
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
22 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms this
23 determination.

24 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
25 findings that the actions contemplated in this ordinance are consistent, on balance, with the
City's General Plan and eight priority policies of Planning Code Section 101.1. The Board

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
2 Board of Supervisors in File No. _____, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
4 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
5 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
6 herein by reference. A copy of Planning Commission Resolution No. _____ is on file with the
7 Board of Supervisors in File No. _____.

8
9 Section 2. Findings About Inclusionary Affordable Housing Requirements.

10 (a) The purpose of this ordinance is to adopt inclusionary or affordable housing
11 obligations following voter approval of Proposition C at the June 7, 2016 election to revise the
12 City Charter's inclusionary affordable housing requirements, which won overwhelming support
13 with 67.9% of the vote, and to update the provisions of the Planning Code that became
14 effective after the Charter Amendment passed.

15 (b) The San Francisco residential real estate market is one of the most expensive in
16 the United States. In February 2016, the California Association of Realtors reported that the
17 median priced home in San Francisco was \$1,437,500. This price is 222% higher than the
18 State of California median (\$446,460), and 312% higher than the national average
19 (\$348,900). While the national homeownership rate is approximately 63.8%, only
20 approximately 37% of San Franciscans own their own home. The majority of market-rate
21 homes for sale in San Francisco are priced out of the reach of low and moderate income
22 households. In 2015, the average rent was \$3,524, which is affordable to households earning
23 over \$126,864.

24 (c) The Board of Supervisors adopted San Francisco's General Plan Housing Element
25 in March 2015, and the California Housing and Community Development Department certified

1 it on May 29, 2015. The Housing Element states that San Francisco's share of the regional
2 housing need for years 2015 through 2022 includes 10,873 housing units for very-low and
3 low-income households and 5,460 units for moderate/middle-income households, and a total
4 production of 28,870 net new units, with almost 60% to be affordable for very-low, low- and
5 moderate/middle-income San Franciscans.

6 (d) In November 2016, the City provided the updated Residential Affordable Housing
7 Nexus Analysis that confirms and quantifies the impact of new market rate housing
8 development on the demand for affordable housing for households earning up to 120% of
9 area median income. The study demonstrates a need of 31.8% affordable housing for rental
10 housing, and 37.6% affordable housing for ownership housing, and a need of 24.1% onsite
11 affordable housing for rental housing, and 27.3% onsite affordable housing for ownership
12 housing for households with incomes up to 120% of Area Median Income.

13 (e) In February 2017, the Office of the Controller presented a study of the economic
14 feasibility of increased inclusionary housing requirements, entitled "Inclusionary Housing
15 Working Group: Final Report." The Controller's Office, supported by a contracted consulting
16 team of three firms and advised by a Technical Advisory Committee (TAC) with
17 representatives appointed by the Mayor and Board of Supervisors, developed several policy
18 recommendations, including: (1) that the City should impose different inclusionary housing
19 requirements on rental and for-sale (condominium) properties; (2) that the City can set the
20 initial onsite requirements at a maximum feasible amount of 18% for rental projects and 20%
21 for ownership projects; (3) that the City should commit to a 15-year schedule of increases to
22 the inclusionary housing rate, at a rate of 0.5% increase each year; and (4) that the City
23 should revise the schedule of Inclusionary housing fees to provide a more equivalent cost for
24 developers as the on-site requirements. The Controller's Office recommended updating the
25

1 fee percentage to 23% and 28% to create an equivalency to the recommended 18% and 20%
2 on-site requirements, with the City conducting the specific calculation of the fee itself.

3 (f) The Controller further acknowledged that application of the state-provided density
4 bonus could make a difference in the financial feasibility of housing development projects.

5 (g) In an effort to support a mix of both ownership project and rental projects, the City
6 is providing a direct financial contribution to project sponsors who agree to rent units for a
7 period of 30 years. The direct financial contribution is in the form of a reduction in the
8 applicable affordable housing requirement.

9
10 Section 3. The Planning Code is hereby amended by revising Sections 415.2, 415.3,
11 415.5, 415.6, and 415.7, and adding a new Section 415.11, to read as follows:

12 **SEC. 415.2 DEFINITIONS.**

13 See Section 401 of this Article. For purposes of Sections 415.3et seq., "low income"
14 households shall be defined as households whose total household income ~~does not exceed 55%~~
15 is 45% to 65% of Area Median Income for purposes of renting an affordable unit, or ~~80%~~ 70% to
16 90% of Area Median Income for purposes of purchasing an affordable unit, and "moderate
17 income" and "middle income" households shall mean households whose total household
18 income ~~does not exceed 100%~~ is 80% to 120% of Area Median Income for purposes of renting an
19 affordable unit, or ~~120%~~ 100% to 140% of Area Median Income for purposes of purchasing an
20 affordable unit. The Small Sites Fund, defined in Section 415.5(f)(2), and the Small Sites
21 Program may use Affordable Housing Fees to acquire sites and buildings consistent with the
22 income parameters of the Programs, as periodically updated and administered by MOHCD.

23 "Owned Unit" shall mean a dwelling unit that is a condominium, stock cooperative, community
24 apartment or detached single family home. The owner or owners of an owned unit must occupy the unit
25 as their primary residence.

1 “Rental Housing Project” shall mean a housing project consisting solely of Rental Units, as
2 defined in Section 401, which meets the following requirements:

3 (1) The units shall be rental housing for not less than 30 years from the issuance of the
4 certificate of occupancy pursuant to an agreement between the developer and the City. This agreement
5 shall be in accordance with applicable State law governing rental housing. All such agreements
6 entered into with the City must be reviewed and approved by the Planning Director and the City
7 Attorney’s Office, and may be executed by the Planning Director;

8 (2) The agreement shall be recorded against the property prior to issuance of the
9 certificate of occupancy.

10
11 **SEC. 415.3. APPLICATION.**

12 * * * *

13 (b) Any development project that has submitted a complete Environmental Evaluation
14 application prior to January 1, 2013 shall comply with the Affordable Housing Fee
15 requirements, the on-site affordable housing requirements or the off-site affordable housing
16 requirements, as applicable, in effect on January 12, 2016. For development projects that
17 have submitted a complete Environmental Evaluation application on or after January 1, 2013,
18 the requirements set forth in Planning Code Sections 415.5, 415.6, and 415.7 shall apply to
19 certain development projects consisting of 25 dwelling units or more during a limited period of
20 time as follows.

21 (1) If a development project is eligible and elects to provide on-site affordable
22 housing, the development project shall provide the following amounts of on-site affordable
23 housing. All other requirements of Planning Code Sections 415.1et seq. shall apply.
24
25

1 (A) Any development project that has submitted a complete
2 Environmental Evaluation application prior to January 1, 2014 shall provide affordable units in
3 the amount of 13% of the number of units constructed on-site.

4 (B) Any development project that has submitted a complete
5 Environmental Evaluation application prior to January 1, 2015 shall provide affordable units in
6 the amount of 13.5% of the number of units constructed on-site.

7 (C) Any development project that has submitted a complete
8 Environmental Evaluation application on or prior to January 12, 2016 shall provide affordable
9 units in the amount of 14.5% of the number of units constructed on-site.

10 (D) Any development project that submits an Environmental Evaluation
11 application after January 12, 2016, shall comply with the requirements set forth in Planning
12 Code Sections 415.5, 415.6 and 415.7, as applicable.

13 (E) Notwithstanding the provisions set forth in subsections (b)(1)(A), (B)
14 and (C) of this section 415.3, if a development project is located in a UMU Zoning District or in
15 the South of Market Youth and Family Zoning District, and is eligible and elects to provide on-
16 site units pursuant to Section 415.5(g), such development project shall comply with the on-site
17 requirements applicable within such Zoning Districts, as they existed on January 12, 2016,
18 plus the following additional amounts of on-site affordable units: (i) if the development project
19 has submitted a complete Environmental Evaluation application prior to January 1, 2014, the
20 Project Sponsor shall provide additional affordable units in the amount of 1% of the number of
21 units constructed on-site; (ii) if the development project has submitted a complete
22 Environmental Evaluation application prior to January 1, 2015, the Project Sponsor shall
23 provide additional affordable units in the amount of 1.5% of the number of units constructed
24 on-site; or (iii) if the development project has submitted a complete Environmental Evaluation
25

1 application on or prior to January 12, 2016, the Project Sponsor shall provide additional
2 affordable units in the amount of 2% of the number of units constructed on-site.

3 (F) Any development project that has submitted a complete
4 Environmental Evaluation application on or before January 12, 2016 and seeks to utilize a
5 density bonus under State Law shall use its best efforts to provide on-site affordable units in
6 the amount of 25% of the number of units constructed on-site and shall consult with the
7 Planning Department about how to achieve this amount of inclusionary affordable housing.

8 ~~Any project~~ An applicant seeking a density bonus under the provisions of State Law shall
9 provide reasonable documentation to establish eligibility for a requested density bonus, incentives or
10 concessions, and waivers or reductions of development standards. ~~prepare a report analyzing how the~~
11 ~~concessions and incentives requested are necessary in order to provide the required on-site affordable~~
12 ~~housing.~~

13 (2) If a development project pays the Affordable Housing Fee or is eligible and
14 elects to provide off-site affordable housing, the development project shall provide the
15 following fee amount or amounts of off-site affordable housing during the limited periods of
16 time set forth below. All other requirements of Planning Code Sections 415.1 et seq. shall
17 apply.

18 (A) Any development project that has submitted a complete
19 Environmental Evaluation application prior to January 1, 2014, shall pay a fee or provide off-
20 site housing in an amount equivalent to 25% of the number of units constructed on-site.

21 (B) Any development project that has submitted a complete
22 Environmental Evaluation application prior to January 1, 2015, shall pay a fee or provide off-
23 site housing in an amount equivalent to 27.5% of the number of units constructed on-site.

24 (C) Any development project that has submitted a complete
25 Environmental Evaluation application on or prior to January 12, 2016 shall pay a fee or

1 provide off-site housing in an amount equivalent to 30% of the number of units constructed
2 on-site.

3 (D) Any development project that submits an Environmental Evaluation
4 application after January 12, 2016 shall comply with the requirements set forth in Sections
5 415.5, 415.6, and 415.7, as applicable.

6 (E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)
7 and (C) of this Section 415.3, for development projects proposing buildings over 120 feet in
8 height, as measured under the requirements set forth in the Planning Code, except for
9 buildings up to 130 feet in height located both within a special use district and within a height
10 and bulk district that allows a maximum building height of 130 feet, such development projects
11 shall pay a fee or provide off-site housing in an amount equivalent to ~~33~~30% of the number of
12 units constructed on-site. Any buildings up to 130 feet in height located both within a special
13 use district and within a height and bulk district that allows a maximum building height of 130
14 feet shall comply with the provisions of subsections (b)(2)(A), (B) and (C) of this Section 415.3
15 during the limited periods of time set forth therein.

16 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)
17 and (C) of this section 415.3, if a development project is located in a UMU Zoning District or in
18 the South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee
19 or is eligible and elects to provide off-site affordable housing pursuant to Section 415.5(g), or
20 elects to comply with a land dedication alternative, such development project shall comply
21 with the fee, off-site or land dedication requirements applicable within such Zoning Districts,
22 as they existed on January 12, 2016, plus the following additional amounts for the Affordable
23 Housing Fee or for land dedication or off-site affordable units: (i) if the development project
24 has submitted a complete Environmental Evaluation application prior to January 1, 2014, the
25 Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site

1 affordable units, in an amount equivalent to 5% of the number of units constructed on-site; (ii)
2 if the development project has submitted a complete Environmental Evaluation application
3 prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional
4 land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of
5 units constructed on-site; or (iii) if the development project has submitted a complete
6 Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor
7 shall pay an additional fee, or provide additional land dedication or off-site affordable units, in
8 an amount equivalent to 10% of the number of units constructed on-site. Notwithstanding the
9 foregoing, a development project shall not pay a fee or provide off-site units in a total amount
10 greater than the equivalent of ~~33~~30% of the number of units constructed on-site.

11 (G) Any development project consisting of 25 dwelling units or more that
12 has submitted a complete Environmental Evaluation application on or prior to January 12,
13 2016, and is eligible and elects to provide off-site affordable housing, may provide off-site
14 affordable housing by acquiring an existing building to fulfill all or part of the requirements set
15 forth in this Section 415.3 and in Section 415.7 with an equivalent amount of units as specified
16 in this Section 415.3(b)(2), as reviewed and approved by the Mayor's Office of Housing and
17 Community Development and consistent with the parameters of its Small Sites Acquisition
18 and Rehabilitation Program, in conformance with the income limits for the Small Sites
19 Program.

20 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

21 * * * *

22 (b) Amount of Fee. The amount of the fee ~~which~~ that may be paid by the project
23 sponsor subject to this Program shall be determined by MOHCD utilizing the following factors:

24 (1) The number of units equivalent to the applicable off-site percentage of the
25 number of units in the principal project.

1 (A) For housing development projects consisting of 10 dwelling units or more,
2 but less than 25 dwelling units, the applicable percentage shall be 20% for housing development
3 projects consisting of 10 dwelling units or more, but less than 25 dwelling units.

4 (B) ~~The applicable percentage for~~ For development projects consisting of
5 25 dwelling units or more, the applicable percentage shall be 33% if such units are Owned Units.

6 (C) For development projects consisting of 25 dwelling units or more, the
7 applicable percentage shall be 30% if such units are Rental Units in a Rental Housing Project. In the
8 event one or more of the Rental Units in the principal Rental Housing Project become ownership units,
9 each Rental Unit or the principal Rental Housing Project in its entirety, as applicable, shall pay to the
10 City the difference in the amount of the applicable inclusionary affordable housing fee so that the total
11 fee would be equivalent to the requirement for Owned Units, which is 33% of the number of total units
12 in the principal project, or such current percentage that has been adjusted annually by MOHCD.

13 (D) For housing developments consisting of 25 or more dwelling units, starting
14 on January 1, 2018, and no later than January 1 of each year thereafter, MOHCD shall increase the
15 applicable percentages set forth in 415.5(b)(1)(B) and 415.5(b)(1)(C) 0.75% each year. In any year
16 that the increase would result in a fee percentage that exceeds the maximum fee percentage in the
17 City's most recently completed Nexus Analysis, the annual increase shall not be applied. MOHCD
18 shall provide the Planning Department, DBI, and the Controller with information on the adjustment to
19 the on-site percentage so that it can be included in the Planning Department's and DBI's website notice
20 of the fee adjustments and the Controller's Citywide Development Fee and Development Impact
21 Requirements Report described in Section 409(a). For the purposes of this Section 415.5, the City shall
22 calculate the fee using the direct fractional result of the total number of units multiplied by the
23 applicable percentage, rather than rounding up the resulting figure as required by Section 415.6(a).

24 (2) The affordability gap shall be calculated using data on ~~the~~ MOHCD's cost of
25 construction of to construct affordable residential housing for three different building heights, as

1 applicable: (A) up to 55 feet; (B) above 55 feet up to 85 feet; and (C) above 85 feet and the Maximum
2 Purchase Price for the equivalent unit size. The fee shall be calculated individually for these three
3 different building types and two types of tenure, ownership and rental, rather than a single fee
4 calculation uniformly applied to all types of projects. The Department and MOHCD shall update
5 the technical report from time to time as they deem appropriate in order to ensure that the
6 affordability gap remains current and to reflect current costs of construction.

7 (3) For all housing developments, no ~~Ne~~ later than January 1 of each year,
8 MOHCD shall adjust the fee based on adjustments in the City's cost of constructing affordable
9 housing. MOHCD shall provide the Planning Department, DBI, and the Controller with
10 information on the adjustment to the fee so that it can be included in the Planning
11 Department's and DBI's website notice of the fee adjustments and the Controller's Citywide
12 Development Fee and Development Impact Requirements Report described in Section
13 409(a). MOHCD ~~is authorized to~~ shall develop an appropriate methodology for indexing the fee,
14 based on adjustments in the cost of constructing housing and the Maximum Purchase Price for the
15 equivalent unit size. The method of indexing shall be published in the Procedures Manual and
16 shall be provided to the Board of Supervisors when it is updated.

17 (4) Specific Geographic Areas. For any housing development that is located in an
18 area with a specific affordable housing requirement set forth in a Special Use District, or in
19 any other section of the Code such as Section 419, the higher affordable housing requirement
20 shall apply.

21 (5) In the event the project sponsor does not procure a building permit or site permit for
22 construction of the principal project within two years (24 months) of the project's approval, the
23 development project shall comply with the inclusionary affordable housing requirements applicable
24 thereafter at the time when the project sponsor does proceed with pursuing a building permit. Such
25

1 time period shall be extended in the event of any litigation seeking to invalidate the City's approval of
2 such project, for the duration of the litigation.

3 * * * *

4 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

5 *The requirements set forth in this Section 415.6 will be reviewed when the City completes an*
6 *Economic Feasibility Study.* If a project sponsor is eligible and elects to provide on-site units
7 pursuant to Section 415.5(g), the development project shall meet the following requirements:

8 (a) Number of Units. The number of units constructed on-site shall be as follows:

9 (1) For housing development projects consisting of 10 dwelling units or more, but less
10 than 25 dwelling units, the number of affordable units constructed on-site shall generally be
11 12% of all units constructed on the project site for housing development projects consisting of 10
12 dwelling units or more, but less than 25 dwelling units. The affordable units shall all be affordable
13 to low- and lower- income households. Owned Units shall be affordable to households earning 70%
14 to 90% of Area Median Income, with an average affordable sales price set at 80% of Area Median
15 Income or less. Rental Units shall be affordable to households earning 45% to 65% of Area Median
16 Income, with an average affordable rent set at 55% of Area Median Income or less. The number of
17 units constructed on-site shall generally be 25% of all units constructed on the project site for housing
18 development projects consisting of 25 dwelling units or more, with a minimum of 15% of the units
19 affordable to low-income households and 10% of the units affordable to low- or moderate/middle-
20 income households.

21 (2) For any housing development project consisting of 25 or more Owned Units, the
22 number of affordable units constructed on-site shall be 27% of all units constructed on the project site,
23 with a minimum of 15% of the units affordable to low- or lower-income households and 12% of the units
24 affordable to moderate/middle-income households. Owned Units for low- and lower-income
25 households shall be affordable to a range of households from 60% to 100% of Area Median Income,

1 with an average affordable sales price set at 80% of Area Median Income or less. Owned Units for
2 middle/moderate income households shall be affordable to a range of households from 100% to 140%
3 of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or
4 less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of
5 Area Median Income for a single income household. MOHCD may reduce the average Area Median
6 Income upon request by the project sponsor.

7 (3) For any Rental Housing Project consisting of 25 or more Rental Units, the number
8 of affordable units constructed on-site shall generally be 24% of all units constructed on the project
9 site, with a minimum of 15% of the units affordable to low- or lower-income households and 9% of the
10 units affordable to moderate/middle-income households. Rental Units for low- and lower-income
11 households shall be affordable to a range of households earning from 40% to 80% of Area Median
12 Income, with an average affordable rent set at 55% of Area Median Income or less. Rental Units for
13 middle/moderate income households shall be affordable to a range of households earning from 80% to
14 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or
15 less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area
16 Median Income for a single income household. MOHCD may reduce the average Area Median Income
17 upon request by the project sponsor. MOHCD shall set forth in the Procedures Manual the
18 administration of rental units within this range.

19 (4) For buildings greater than 300 feet in height, an additional 5% of the on-site
20 residential units shall be affordable to qualifying households, with 60% of the additional affordable
21 units affordable to low- and lower-income households, and 40% of the additional affordable units
22 affordable to moderate/middle-income households.

23 (5) A minimum of 40% of the on-site affordable units shall consist of two bedroom units
24 and a minimum of 20% of the on-site affordable units shall consist of three bedrooms or larger. Units
25 shall have minimum floor areas that conform to the standards developed by the California Tax Credit

1 Allocation Committee (CTCAC) for affordable units. The total residential floor area devoted to the
2 affordable units shall not be less than the applicable percentage applied to the total residential floor
3 area of the principal project, provided that a 10% variation in floor area is permitted.

4 (6) In the event one or more of the Rental Units in the principal Rental Housing Project
5 become ownership units, each converted Rental Unit shall reimburse the City the proportional
6 difference between the amount of the then-current inclusionary affordable housing requirement for
7 Rental Units and Owned Units. If a Rental Housing Project is converted to an ownership housing
8 project in its entirety, an additional 3 percent of the units shall be designated as affordable to
9 qualifying households, apportioned between the required number of low- and lower-income and
10 moderate/middle-income on-site units in compliance with the requirements currently in effect at the
11 time of conversion.

12 (7) The Department shall require as a condition of Department approval of a
13 project's building permit, or as a condition of approval of a Conditional Use Authorization or
14 Planned Unit Development or as a condition of Department approval of a live/work project,
15 that 12%, 24% or 27% ~~25%~~, as applicable, of all units constructed on the project site shall be
16 affordable to qualifying households so that a project sponsor must construct ~~.12~~, .24 or .27 ~~or~~
17 ~~.25~~ times, as applicable, the total number of units produced in the principal project. If the total
18 number of units is not a whole number, the project sponsor shall round up to the nearest
19 whole number for any portion of .5 or above.

20 (8) Specific Geographic Areas. For any housing development that is located in
21 an area with a specific affordable housing requirement set forth in a Special Use District or in
22 any other section of the Code such as Section 419, the higher housing requirement shall
23 apply.

24 (9) If the principal project has resulted in demolition, conversion, or removal of
25 affordable housing units renting or selling to households at income levels and/or for a rental

1 rate or sales price below corresponding income thresholds for units affordable to low income
2 households, the Commission or the Department shall require that the project sponsor replace
3 the number of affordable units removed with units of a comparable number of bedrooms *in*
4 *addition to compliance with the inclusionary requirements set forth in this Section 415.6 or provide*
5 *that 25% of all units constructed as part of the new project shall be affordable to low income or*
6 *moderate/middle income households, whichever is greater.*

7 *(10) Annual indexing. The required on-site affordable housing to satisfy this section*
8 *415.6 shall increase by 0.75% annually for all development projects, beginning on January 1, 2018.*
9 *The increase shall be apportioned between the required number of low- and lower-income and*
10 *moderate/middle-income on-site units in proportion to the requirement currently in effect.*

11 *(11) Any development project that constructs on-site affordable housing units as set*
12 *forth in this Section 415.6 shall diligently pursue completion of such units. In the event the project*
13 *sponsor does not procure a building permit or site permit for construction of the principal project*
14 *within two years (24 months) of the project's approval, the development project shall comply with the*
15 *inclusionary affordable housing requirements applicable thereafter at the time when the project*
16 *sponsor procures a building permit. Such deadline shall be extended in the event of any litigation*
17 *seeking to invalidate the City's approval of such project, for the duration of the litigation.*

18 (b) Timing of Construction. On-site affordable housing required by this Section 415.6
19 shall be constructed, completed, ready for occupancy, and marketed no later than the market
20 rate units in the principal project.

21 (c) Type of Housing.

22 *(1) Equivalency of Units.* All on-site units constructed under this Section 415.6
23 shall be provided as ownership units unless the project sponsor meets the eligibility
24 requirement of Section 415.5(g). ~~*All on-site units must be affordable to low income households.*~~ In
25 general, affordable units constructed under this Section 415.6 shall be comparable in number

1 of bedrooms, exterior appearance and overall quality of construction to market rate units in
2 the principal project. A Notice of Special Restrictions shall be recorded prior to issuance of the
3 first construction document and shall specify the number, location and sizes for all affordable
4 units required under this subsection (c). The affordable units shall be evenly distributed
5 throughout the building. For buildings over 120 feet in height, as measured under the
6 requirements set forth in the Planning Code, the affordable units may be distributed
7 throughout the lower 2/3 of the building, as measured by the number of floors. The interior
8 features in affordable units should be generally the same as those of the market rate units in
9 the principal project, but need not be the same make, model or type of such item as long as
10 they are of good and new quality and are consistent with then-current standards for new
11 housing. The square footage of affordable units does not need to be the same as or
12 equivalent to that in market rate units in the principal project, so long as it is consistent with
13 then-current standards for new housing. The affordable units are not required to be the same
14 size as the market rate units, and may be 90% of the average size of the specific unit type.
15 For buildings over 120 feet in height, as measured under the requirements set forth in the
16 Planning Code, the average size of the unit type may be calculated for the lower 2/3 of the
17 building, as measured by the number of floors. Where applicable, parking shall be offered to
18 the affordable units subject to the terms and conditions of the Department's policy on
19 unbundled parking for affordable housing units as specified in the Procedures Manual and
20 amended from time to time. ~~On-site affordable units shall be ownership units unless the project
21 applicant meets the eligibility requirement of Section 415.5(9).~~

22 (2) Density Bonus Projects. An applicant seeking a density bonus under the provisions
23 of State Law shall provide reasonable documentation to establish eligibility for a requested density
24 bonus, incentives or concessions, and waivers or reductions of development standards. The Planning
25 Department shall provide information about the value of the density bonus, concessions and incentives

1 for each density bonus project and include it in the Department's case report or decision on the
2 application. In addition, beginning in January 2018, the Planning Department shall prepare an annual
3 report to the Planning Commission about the number of density bonus projects, density bonus units and
4 the kinds of density bonuses, concessions and incentives provided to each density bonus project.

5 * * * *

6
7 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE**

8 ~~The requirements set forth in this Section 415.7 will be reviewed when the City completes an~~
9 ~~Economic Feasibility Study.~~ If the project sponsor is eligible and elects pursuant to Section
10 415.5(g) to provide off-site units to satisfy the requirements of Section 415.1 *et seq.*, the
11 project sponsor shall notify the Planning Department and the Mayor's Office of Housing and
12 Community Development ("MOHCD") of its intent as early as possible. The Planning
13 Department and MOHCD shall provide an evaluation of the project's compliance with this
14 Section 415.7 prior to approval by the Planning Commission or Planning Department. The
15 development project shall meet the following requirements:

16 (a) Number of Units: The number of units constructed off-site shall be as follows:

17 (1) For any housing development that is located in an area or Special Use District
18 with a specific affordable housing requirement, set forth in Section 419 or elsewhere in this
19 Code, the higher off-site housing requirement shall apply.

20 (2) For housing development projects consisting of 10 dwelling units or more
21 but less than 25 units, the number of affordable units constructed off-site shall be 20%, so that
22 a project applicant shall construct .20 times the total number of units produced in the principal
23 project. If the total number of units is not a whole number, the project applicant shall round up
24 to the nearest whole number for any portion of .5 or above. The off-site affordable units shall
25 be affordable to low- and lower-income households. Owned Units shall be affordable to

1 households earning 60% to 90% of Area Median Income, with an average affordable sales price set at
2 80% of Area Median Income or less. Rental Units shall be affordable to households earning 40% to
3 80% of Area Median Income, with an average affordable rent set at 55% of Area Median Income or
4 less.

5 (3) For any housing development project consisting of 25 or more Owned Units, the
6 number of affordable units constructed off-site shall be 33% of all units constructed on the project site,
7 with a minimum of 18% of the units affordable to low- or lower-income households and 15% of the
8 units affordable to moderate/middle-income households. Owned Units for low- and lower-income
9 households shall be affordable to a range of households from 60% to 100% of Area Median Income,
10 with an average affordable sales price set at 80% of Area Median Income or less. Owned Units for
11 middle/moderate income households shall be affordable to a range of households from 100% to 140%
12 of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or
13 less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of
14 Area Median Income for a single income household. MOHCD may reduce the average Area Median
15 Income upon request by the project sponsor.

16 (4) For any Rental Housing Project consisting of 25 or more Rental Units, the number
17 of affordable units constructed off-site shall generally be 30% of all units constructed on the project
18 site, with a minimum of 18% of the units affordable to low- or lower-income households and 12% of the
19 units affordable to moderate/middle-income households. Rental Units for low- and lower-income
20 households shall be affordable to a range of households earning from 45% to 65% of Area Median
21 Income, with an average affordable rent set at 55% of Area Median Income or less. Rental Units for
22 middle/moderate income households shall be affordable to a range of households earning from 80% to
23 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or
24 less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area
25 Median Income for a single income household. MOHCD may reduce the average Area Median Income

1 upon request by the project sponsor. MOHCD shall set forth in the Procedures Manual the
2 administration of rental units within this range.

3 (5) In the event one or more of the Rental Units in the principal Rental Housing Project
4 become ownership units, each converted Rental Unit, or the principal Rental Housing Project in its
5 entirety, as applicable, shall either (A) reimburse the City the proportional amount of the inclusionary
6 affordable housing fee, which would be equivalent to the current inclusionary affordable fee
7 requirement for Owned Units, or (B) provide additional off-site affordable units equivalent to the
8 current inclusionary requirements for Owned Units.

9 (6) The Department shall require as a condition of Department approval of a project's
10 building permit, or as a condition of approval of a Conditional Use Authorization or Planned Unit
11 Development or as a condition of Department approval of a live/work project, that 20%, 30% or 33%,
12 as applicable, of all units constructed on the project site shall be constructed off-site and affordable to
13 qualifying households so that a project sponsor must construct .20, .30 or .33 times, as applicable, the
14 total number of units produced in the principal project.

15 (7) For housing developments consisting of 25 or more dwelling units, starting on
16 January 1, 2018, and no later than January 1 of each year thereafter, MOHCD shall increase the
17 applicable percentages set forth in 415.7(a)(3) and 415.7(a)(4) 0.75% each year. In any year that the
18 increase would result in a fee percentage that exceeds the maximum fee percentage in the City's most
19 recently completed Nexus Analysis, the annual increase shall not be applied. The increase shall be
20 apportioned between the required number of low- and lower-income and moderate/middle-income on-
21 site units in proportion to the requirement currently in effect.

22 (8) Any development project that constructs off-site affordable housing units as set forth
23 in this Section 415.6 shall diligently pursue completion of such units. In the event the project sponsor
24 does not procure a building permit or site permit for construction of the principal project or the off-site
25 affordable housing project within two years (24 months) of the project's approval, the development

1 project shall comply with the inclusionary affordable housing requirements applicable thereafter at the
2 time when the project sponsor procures a building permit. Such deadline shall be extended in the event
3 of any litigation seeking to invalidate the City's approval of the principal project or off-site affordable
4 housing project for the duration of the litigation.

5 For housing development projects consisting of 25 dwelling units or more, the number of units
6 constructed off-site shall be 33%, with 20% of the units affordable to low income households and 13%
7 of the units affordable to low or moderate/middle income households, so that a project applicant shall
8 construct .33 times the total number of units produced in the principal project. If the total number of
9 units is not a whole number, the project applicant shall round up to the nearest whole number for any
10 portion of .5 or above.

11 (94) Specific Geographic Areas.

12 For any housing development that is located in an area with a specific
13 affordable housing requirement set forth in a Special Use District, or in any other section of
14 the Code such as Section 419, the higher affordable housing requirement shall apply.

15 * * * *

16 **SEC. 415.11. SEVERABILITY.**

17 If any subsection, sentence, clause, phrase, or word of this Section 415, or any application
18 thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court
19 of competent jurisdiction, such decision shall not affect the validity of the remaining portions or
20 applications of the Section. The Board of Supervisors hereby declares that it would have passed this
21 ordinance and each and every subsection, sentence, clause, phrase, and word not declared invalid or
22 unconstitutional without regard to whether any other portion of this Section or application thereof
23 would be subsequently declared invalid or unconstitutional.
24
25

1 Section 4. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5
6 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
10 additions, and Board amendment deletions in accordance with the "Note" that appears under
11 the official title of the ordinance.

12
13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By: 
16 KATE H. STACY
17 Deputy City Attorney

18 n:\legana\as2017\1700109\01174198.docx

LEGISLATIVE DIGEST
(Substituted 2/28/2017)

[Planning Code – Inclusionary Affordable Housing Fee and Requirements]

Ordinance amending the Planning Code to revise the amount of the Inclusionary Affordable Housing Fee and the On-Site and Off-Site Affordable Housing Alternatives and other Inclusionary Housing requirements; adding reporting requirements for density bonus projects; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

The City generally requires private developers of new market-rate housing to provide affordable housing (“Inclusionary Housing”) by paying a fee to the City. A developer could also opt to provide Inclusionary Housing on- or off-site. The City’s Inclusionary Affordable Housing Fee and other requirements are set forth in Planning Code Sections 415 et seq. and provide 3 methods of complying with the requirements.

1. Affordable Housing Fee: The development project pays a fee equivalent to the applicable off-site percentage of the number of units in the principal project:

- For development projects consisting of 10 – 24 dwelling units, the percentage is 20%.
- For development projects consisting of 25 dwelling units or more, the percentage is 33%.

2. If a developer opts to provide affordable housing on-site, the on-site Affordable Housing would be provided as follows:

- For housing development projects consisting of 10 – 24 dwelling units, the number of affordable units constructed on-site would generally be 12% of all units constructed on the project site. The units must be affordable to low-income households.
- For housing development projects consisting of 25 dwelling units or more, the number of affordable units constructed on-site would generally be 25% of all units constructed on the project site, with a minimum of 15% of the units affordable to low-income households and 10% of the units affordable to low- or middle- income households.

3. If a developer opts to provide affordable housing off-site, the off-site Affordable Housing would be provided as follows:

- For housing development projects consisting of 10-24 dwelling units, the number of affordable units constructed off-site would be 20% of the number of units in the principal project.
- For housing development projects consisting of 25 dwelling units or more, the number of affordable units constructed off-site would be 33% of the number of units in the principal project, with 20% of the units affordable to low-income households and 13% of the units affordable to low- or middle-income households.

If there is a higher Inclusionary Housing requirement in specific zoning districts, the higher requirement would apply. There are specific Inclusionary Housing requirements for the UMU and SOMA Youth & Families Zoning Districts. The Planning Code also contains a number of "grandfathering" provisions, which set the Inclusionary Housing requirements at lower percentages for a limited period of time, depending on when a complete environmental evaluation application was submitted.

The Planning Code directs the Mayor's Office of Housing and Community Development ("MOHCD") to set the amount of the fee to be paid by the project sponsor to calculate the "affordability gap" using data on the cost of construction of providing the residential housing and the Maximum Purchase Price for the equivalent unit size.

Section 401 defines a low-income household as one whose income does not exceed 55% of Area Median Income for purposes of renting an affordable unit, and 80% of Area Median Income for purposes of purchasing an affordable unit. "Moderate income" and "middle income" households shall mean households whose total household income does not exceed 100% of Area Median Income for purposes of renting an affordable unit, and 120% of Area Median Income for purposes of purchasing an affordable unit.

The Planning Code also requires an applicant seeking a density bonus under State law to provide analysis to support any requested concessions and incentives under the State law.

The Planning Code requires the Controller to study the economic feasibility of the City's inclusionary housing requirements and produce a report in 2016 and every three years thereafter. The Board must consider the report within three months and consider legislative amendments to the City's Inclusionary Housing in-lieu fees, on-site, off-site, or other alternatives recommended by the Controller and/or the Planning Commission based on the feasibility analyses and with guidance from the City's Nexus Study, with the objective of maximizing affordable Inclusionary Housing in market rate housing production.

Amendments to Current Law

The Proposed Legislation would change the inclusionary affordable housing requirement for 3 kinds of inclusionary affordable housing in the following ways.

1. Inclusionary Affordable Housing Fee: The Amendments would set the Inclusionary Affordable Housing Fee for projects consisting of 25 dwelling units or more to 33% for an ownership housing project and 30% for a rental housing project. The ordinance also requires an annual increase of 0.75% of these fees beginning in January 2018.

The Amendments would direct MOHCD to calculate the Inclusionary Affordable Housing Fee by using data on the City's cost of construction of providing the residential housing for 3 different building types and 2 types of tenure, ownership and rental, rather than a single fee calculation uniformly applied to all types of projects. The 3 building types would be based on the height of the building: (A) up to 55 feet; (B) above 55 feet up to 85 feet; and (C) above 85 feet. MOHCD would update the Fee annually to ensure that the Fee amount remains current and reflects the City's current costs for the different building types and tenures.

2. On-Site Inclusionary Affordable Housing Units: A project sponsor may elect to provide on-site affordable housing in lieu of paying the Inclusionary Fee.

For housing projects consisting of 10 – 24 units, the on-site affordable Owned Units shall be affordable to households earning 70% to 90% of Area Median Income, with an average affordable sales price set at 80% of Area Median Income or less. Affordable Rental Units shall be affordable to households earning 45% to 65% of Area Median Income, with an average affordable rent set at 55% of Area Median Income or less.

For ownership housing projects consisting of 25 or more units, the number of affordable units constructed on-site shall be 27% of all units constructed on the project site, with a minimum of 15% of the units affordable to low-or lower-income households and 12% of the units affordable to moderate/middle-income households.

- Owned Units for low- and lower-income households shall be affordable to a range of households from 60% to 100% of Area Median Income, with an average affordable sales price set at 80% of Area Median Income or less. Owned Units for middle/moderate income households shall be affordable to a range of households from 100% to 140% of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor.

For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed on-site shall generally be 24% of all units constructed on the project site, with a minimum of 15% of the units affordable to low- or lower-income households and 9% of the units affordable to moderate/middle-income households.

- Rental Units for low- and lower-income households shall be affordable to a range of households earning from 40% to 80% of Area Median Income, with an average affordable rent set at 55% of Area Median Income or less. Rental Units for middle/moderate income households shall be affordable to a range of households earning from 80% to 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor. MOHCD shall set forth in the Procedures Manual the administration of rental units within this range.

For buildings greater than 300 feet in height, an additional 5% of the on-site residential units shall be affordable to qualifying households, with 60% of the additional affordable units affordable to low- and lower-income households, and 40% of the additional affordable units affordable to moderate/middle-income households.

The required on-site affordable housing would increase by 0.75% annually for all development projects, beginning on January 1, 2018. The increase would be apportioned between the required number of low- and lower-income and moderate/middle-income on-site units in proportion to the requirement currently in effect.

3. Off-Site Inclusionary Affordable Housing.

- For any housing development project consisting of 25 or more Owned Units, the number of affordable units constructed off-site shall be 33% of all units constructed on the project site, with a minimum of 18% of the units affordable to low- or lower-income households and 15% of the units affordable to moderate/middle-income households. Owned Units for low- and lower-income households shall be affordable to a range of households from 60% to 100% of Area Median Income, with an average affordable sales price set at 80% of Area Median Income or less. Owned Units for middle/moderate income households shall be affordable to a range of households from 100% to 140% of Area Median Income, with an average affordable sales price set at 120% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum sales price set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor.
- For any Rental Housing Project consisting of 25 or more Rental Units, the number of affordable units constructed off-site shall generally be 30% of all units constructed on the project site, with a minimum of 18% of the units affordable to low- or lower-income households and 12% of the units affordable to moderate/middle-income households. Rental Units for low- and lower-income households shall be affordable to a range of households earning from 45% to 65% of Area Median Income, with an average

affordable rent set at 55% of Area Median Income or less. Rental Units for middle/moderate income households shall be affordable to a range of households earning from 80% to 120% of Area Median Income, with an average affordable rent set at 100% of Area Median Income or less; provided that a middle/moderate income unit shall have a maximum rent set at 100% of Area Median Income for a single income household. MOHCD may reduce the average Area Median Income upon request by the project sponsor. MOHCD shall set forth in the Procedures Manual the administration of rental units within this range.

- For housing developments consisting of 25 or more dwelling units, starting on January 1, 2018, and no later than January 1 of each year thereafter, MOHCD would increase the applicable percentages for off-site affordable housing 0.75% each year. In any year that the increase would result in a fee percentage that exceeds the maximum fee percentage in the City's most recently completed Nexus Analysis, the annual increase would not be applied. The increase would be apportioned between the required number of low- and lower-income and moderate/middle-income on-site units in proportion to the requirement currently in effect.

For all projects consisting of 25 or more dwelling units, in the event a rental housing project or unit becomes ownership housing, the owner would reimburse the cost of the fee deduction to the City, or provide additional on-site or off-site affordable units, so that the project would comply with the current inclusionary housing requirements for ownership housing.

For all projects, if a project sponsor does not procure a building permit within 2 years of project approval, the project sponsor must comply with the inclusionary housing requirements at the time of building permit procurement.

For all projects, the Amendments would change the definition of low-income households to include households whose total household income is 45% to 65% of Area Median Income for purposes of renting an affordable unit, or 70% to 90% of Area Median Income for purposes of purchasing an affordable unit, and "moderate income" and "middle income" households shall mean households whose total household income is 80% to 120% of Area Median Income for purposes of renting an affordable unit, or 100% to 140% of Area Median Income for purposes of purchasing an affordable unit.

An applicant seeking a density bonus under the provisions of State Law must provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, and waivers or reductions of development standards, consistent with State law. The Planning Department would provide information about the value of the density bonus, concessions and incentives for each density bonus project and include it in the Department's case report or decision on the application. Beginning in January 2018, the Planning Department shall prepare an annual report to the Planning Commission about the number of

FILE NO. 161351

density bonus projects, density bonus units and the kinds of density bonuses, concessions and incentives provided to each density bonus project.

Background Information

The City published the Residential Affordable Housing Nexus Analysis in November 2016.

The Controller completed the Feasibility Analysis required by Planning Code Section 415.10 in February 2017.

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